

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JULIO CHUMACERA,

Defendant.

Case No.: 13-CR-229-GPC

**ORDER DENYING MOTION FOR
REDUCTION OF SENTENCE**

[ECF Nos. 37, 41]

I. INTRODUCTION

On September 16, 2013, Julio Chumacera (“Defendant”) was sentenced to a custodial term of 60 months for a conviction of conspiracy involving the importation of methamphetamine under 18 USC § 371. (ECF No. 35.) Defendant originally received a sentence below the guideline range because the sentence was limited by the statutory maximum under § 5G1.1(a). In 2014, the United States Sentencing Commission promulgated Amendment 782 (“Drugs Minus 2”), which, effective November 1, 2014, lowered the base offense levels for most drug quantities in USSG § 2D1.1(c), and made this change retroactive via Amendment 788. *See also* USSG § 1B1.10(c).

On January 12, 2015, Defendant, proceeding pro se, filed a Motion for Reduction of

1 Sentence under 18 U.S.C. § 3582(c). (ECF No. 37.) On January 12, 2015, the Court
 2 provisionally appointed Federal Defenders of San Diego, Inc. (“FDSDI”) to represent
 3 Defendant. (ECF No. 38.) On October 19, 2015, Defendant filed an updated Motion to
 4 Reduce Sentence. (ECF No. 41.) The government did not file an opposition.

5 Finding that Defendant’s current sentence is below the low-end of the amended
 6 guideline range, the Court **DENIES** Defendant’s Motion for Reduction of Sentence.

7 II. DISCUSSION

8 A. Modification of Sentence Under 18 U.S.C. § 3582(c)

9 Generally, a federal court “may not modify a term of imprisonment once it has been
 10 imposed.” 18 U.S.C. § 3582(c). An exception to that rule lies “in the case of a defendant
 11 who has been sentenced to a term of imprisonment based on a sentencing range that has
 12 subsequently been lowered by the Sentencing Commission.” § 3582(c)(2). When the
 13 Commission makes a Guidelines amendment retroactive, 18 U.S.C. § 3582(c)(2)
 14 authorizes a district court to reduce an otherwise final sentence that is based on the
 15 amended provision. Any reduction must be consistent with applicable policy statements
 16 issued by the Sentencing Commission. *Id.*

17 Amendment 782 to the United States Sentencing Guidelines, effective November 1,
 18 lowered the penalties for most drug offenses by reducing the offense level in the
 19 § 2D1.1 Drug Quantity Table by two levels. In Amendment 788, the Sentencing
 20 Commission decreed that Amendment 782 may be applied retroactively to lower the
 21 sentences of previously sentenced inmates.

22 In *Dillon v. United States*, 560 U.S. 817, 826-27 (2010), the Supreme Court set forth
 23 a two-step inquiry for assessing a motion for reduction of sentence under § 3582(c). *Id.*

24 At step one, § 3582(c)(2) requires the court to follow the Commission’s
 25 instructions in § 1B1.10 to determine the prisoner’s eligibility for a sentence
 26 modification and the extent of the reduction authorized. Specifically,
 27 § 1B1.10(b)(1) requires the court to begin by “determin[ing] the amended
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1 guideline range that would have been applicable to the defendant" had the
 2 relevant amendment been in effect at the time of the initial sentencing. "In
 3 making such determination, the court shall substitute only the amendments
 4 listed in subsection (c) for the corresponding guideline provisions that were
 5 applied when the defendant was sentenced and shall leave all other guideline
 6 application decisions unaffected."

7 * * * * *

8 At step two of the inquiry, § 3582(c)(2) instructs a court to consider any
 9 applicable § 3553(a) factors and determine whether, in its discretion, the
 10 reduction authorized by reference to the policies relevant at step one is
 11 warranted in whole or in part under the particular circumstances of the case.

12 **B. Determination of Amended Guideline Range**

13 Under § 1B1.10, a defendant is eligible for a sentencing modification when an
 14 amendment listed in § 1B1.10(d) lowers "the guideline range that corresponds to the
 15 offense level and criminal history category determined pursuant to § 1B1.1(a), which is
 16 determined before consideration of any departure provision in the Guidelines Manual or
 17 any variance." USSG § 1B1.10 n.1(A). Section 1B1.10(b)(2) confines the extent of the
 18 reduction authorized. Once the Court determines the amended guideline range, it "shall
 19 not reduce the defendant's term of imprisonment . . . to a term that is less than the minimum
 20 of the amended guideline range." *Id.* § 1B1.10(b)(2)(A). The only exception to this
 21 prohibition applies if the defendant previously received a downward departure "pursuant
 22 to a government motion to reflect the defendant's substantial assistance to authorities." In
 23 that case, the Court may apply "a reduction comparably less than the amended guideline
 24 range." *Id.* § 1B1.10(b)(2)(B).

25 As Amendment 782 is listed in § 1B1.10(d), the Court must determine the "amended
 26 guideline range" that would have been applicable to the defendant had Amendment 782
 27 been in effect at the time of the sentence. USSG § 1B1.10(b)(1). Determination of the
 28 "amended guideline range" is the issue in this case. Defendant has calculated the "amended

1 guideline range" without taking into account the statutory maximum that overrode the
 2 guideline range.

3 The present case involved a conspiracy under 18 U.S.C. § 371. Under the guidelines
 4 in effect at the time of sentencing, the base offense level was level 38. The Court reduced
 5 the guidelines by 4 levels based on mitigating role (§ 2D1.1(a)(15)); 2 levels for minor role
 6 (§ 3B1.2(b)); and 3 levels for acceptance of responsibility (§ 3E1.1(b)). The Court found
 7 that the adjusted offense level was 29, the Criminal History Category was III, and the
 8 applicable guideline range was 108-135 months. However, the Court further found that this
 9 guideline range was limited by the statutory maximum under § 5G1.1(a).

10 Applying the amended base offense level provided by Amendment 782, the base
 11 offense level is 36. Leaving all other guideline application decisions unaffected and
 12 removing departures and variances results in a reduction of 8 levels: 3 levels based on
 13 mitigating role (§ 2D1.1(a)(15)); 2 levels for minor role (§ 3B1.2(b)); and 3 levels for
 14 acceptance of responsibility (§ 3E1.1(b)). The adjusted offense level is 28, the Criminal
 15 History Category is III and the applicable guideline range is 97-121 months. In the instant
 16 case, Defendant received a below-guideline sentence based on the statutory maximum for
 17 a single count of conviction, not substantial assistance to the government. To obtain relief
 18 under § 3582(c), the guideline amendments at issue must "lower[]" a defendant's
 19 applicable guideline range. U.S.S.G. § 1B1.10(a)(2)(B) ("A reduction in [a] defendant's
 20 term of imprisonment is not consistent with this policy statement and therefore is not
 21 authorized under 18 U.S.C. § 3582(c)(2) if . . . [the amendment] does not have the effect of
 22 lowering the defendant's applicable guideline range"). Here, they do not. Defendant's
 23 amended guideline range is 97 to 121 months and Defendant received a below-guideline
 24 sentence of 60 months. Since the lower limits of the amended guideline range is higher
 25 than the original sentence, Defendant is ineligible for modification of their sentence.

26 Accordingly, the Court **DENIES** Defendant's motion for a sentence reduction under
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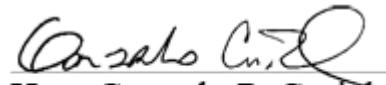
1 18 U.S.C. § 3582(c)(2).

2 **III. CONCLUSION AND ORDER**

3 Based on the reasons stated above, Defendant's Motion for Reduction of Sentence
4 (ECF Nos. 37, 41) is **DENIED**.

5 **IT IS SO ORDERED.**

6 Dated: October 30, 2015


7 Hon. Gonzalo P. Curiel
8 United States District Judge